

§ 1.904(f)-1T Overall foreign loss and the overall foreign loss account (temporary).

(a)(1) [Reserved] For further guidance, see § 1.904(f)-1(a)(1).

(2) *Application to post-1986 taxable years.* The principles of §§ 1.904(f)-1 through 1.904(f)-5 shall apply to overall foreign loss sustained in taxable years beginning after December 31, 1986, modified so as to take into account the effect of statutory amendments.

(b) through (d)(3) [Reserved] For further guidance, see § 1.904(f)-1(b) through (d)(3).

(d)(4) *Adjustments for capital gains and losses.* If a taxpayer has capital gains or losses, the taxpayer shall make adjustments to such capital gains and losses to the extent required under section 904(b)(2) and § 1.904(b)-1 before applying the provisions of § 1.904(f)-1T. See § 1.904(b)-1(h).

(e) and (f) [Reserved] For further guidance, see § 1.904(f)-1(e) and (f).

(g) *Effective/applicability date.* This section applies to taxable years beginning after December 21, 2007.

(h) *Expiration date.* The applicability of this section expires on December 20, 2010.

[T.D. 9371, 72 FR 72597, Dec. 21, 2007]

§ 1.904(f)-2 Recapture of overall foreign losses.

(a) *In general.* A taxpayer shall be required to recapture an overall foreign loss as provided in this section. Recapture is accomplished by treating as United States source income a portion of the taxpayer's foreign source taxable income of the same limitation as the foreign source loss that resulted in an overall foreign loss account. As a result, if the taxpayer elects the benefits of section 901 or section 936, the taxpayer's foreign tax credit limitation with respect to such income is decreased. As provided in § 1.904(f)-1(e)(2), the balance in a taxpayer's overall foreign loss account is reduced by the amount of loss recaptured. Recapture continues until such time as the amount of foreign source taxable income recharacterized as United States source income equals the amount in the overall foreign loss account. As provided in § 1.904(f)-1(e)(2), the balance in an overall foreign loss account

is reduced at the end of each taxable year by the amount of the loss recaptured during that taxable year. Regardless of whether recapture occurs in a year in which a taxpayer elects the benefits of section 901 or in a year in which a taxpayer deducts its foreign taxes under section 164, the overall foreign loss account is recaptured only to the extent of foreign source taxable income remaining after applying the appropriate section 904(b) adjustments, if any, as provided in paragraph (b) of this section.

(b) *Determination of taxable income from sources without the United States for purposes of recapture—(1) In general.* For purposes of determining the amount of an overall foreign loss subject to recapture, the taxpayer's taxable income from sources without the United States shall be computed with respect to each of the separate limitations described in § 1.904(f)-1(c)(2) in accordance with the rules set forth in § 1.904(f)-1(c)(1) and (3). This computation is made without taking into account foreign source taxable income (and deductions properly allocated and apportioned thereto) subject to other separate limitations. Before applying the recapture rules to foreign source taxable income, the following provisions shall be applied to such income in the following order:

(i) Former section 904(b)(3)(C) (prior to its removal by the Tax Reform Act of 1986) and the regulations thereunder shall be applied to treat certain foreign source gain as United States source gain; and

(ii) Section 904(b)(2) and the regulations thereunder shall be applied to make adjustments in the foreign tax credit limitation fraction for certain capital gains and losses.

(c) *Section 904(f)(1) recapture—(1) [Reserved]* For further guidance, see § 1.904(f)-2T(c)(1).

(2) *Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).* In a year in which a taxpayer elects the benefits of sections 901 or 936, a taxpayer may make an annual revocable election to recapture a greater portion of the balance in an overall foreign loss account than is required to be recaptured under paragraph (c)(1) of this section. A taxpayer may make such an election or amend a